

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER-----X  
MICHAEL RABIN,


Plaintiff,

-against-

WESTCHESTER DAY SCHOOL, JOHN AND JANE  
DOE 1-30, MEMBERS OF THE BOARD OF  
TRUSTEES OF WESTCHESTER DAY SCHOOL, in  
their official and individual capacities, whose identities  
are presently unknown to Plaintiff,Defendants.  
-----XIndex Number:  
Date Purchased:Plaintiff designates  
WESTCHESTER  
County as the place of trial.The basis of the venue is  
Defendants' place of  
business.SUMMONS

To the above named Defendant(s)

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York  
September 3, 2019  
\_\_\_\_\_  
MICHAEL G. DOWD  
600 Third Avenue, 15<sup>th</sup> Floor  
New York, NY 10016  
(212) 751-1640

SWEENEY, REICH & BOLZ, LLP  
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Attorneys for Plaintiff

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
MICHAEL RABIN,

Index Number:

Date Filed:

Plaintiff,

-against-

**VERIFIED COMPLAINT**

WESTCHESTER DAY SCHOOL, JOHN AND JANE  
DOE 1-30, MEMBERS OF THE BOARD OF  
TRUSTEES OF WESTCHESTER DAY SCHOOL, in  
their official and individual capacities, whose identities  
are presently unknown to Plaintiff,

Defendants.  
-----X

Plaintiff, Michael Rabin, complaining of Defendants, hereby alleges the following:

**JURISDICTION AND VENUE**

1. This action is timely commenced pursuant to the New York State Child Victims Act, dated February 14, 2019, and CPLR § 214-g.
2. This Court has jurisdiction pursuant to CPLR § 301 as Defendants' principal place of business is in New York and because much of the unlawful conduct complained of herein occurred in New York.
3. Venue is proper pursuant to CPLR § 503 because Westchester County is the principal place of business of Defendants. In addition, many of the events giving rise to this action occurred in Westchester County.

**AS AND FOR THE FIRST CAUSE OF ACTION:**

**NEGLIGENT SUPERVISION**

4. The Plaintiff, Michael Rabin (hereinafter "Plaintiff") was born on April 10, 1958 and is a resident of New York County. Plaintiff attended Westchester Day School from 1965 through 1972.
5. Defendant Westchester Day School (hereinafter "WDS") is at all material times, a private co-educational elementary and middle school located in Westchester County.
6. JOHN AND JANE DOE 1-30 whose names are presently unknown, were members of WDS' Board of Trustees during all material times herein. Upon information and belief, the Board of Trustees is responsible for the operation of WDS, including fundraising and hiring of their administrators.
7. Upon information and belief, Stanley Rosenfeld (hereinafter "Rosenfeld") was hired by WDS as an educator in the late 1960s and early 1970s.
8. Upon information and belief, Rosenfeld met Plaintiff while an employee of WDS and acting within the course and scope of his authority as a WDS educator. Rosenfeld continued acting as an employee and agent of WDS through the entire period he sexually abused Plaintiff.
9. Upon further investigation and belief, in 2001, Rosenfeld pled no contest in a Rhode Island Superior Court to two (2) counts of Second-Degree Child Molestation stemming from the sexual abuse of a 12-year-old boy over the course of six months.

10. Upon information and belief, in July of 2018, attorneys for WDS hired Scott A. Roberts (hereinafter "Roberts") to conduct an investigation into allegations of sexual misconduct involving individuals employed by or under WDS' supervision.
11. Upon information and belief, Roberts completed his investigation and produced a report dated June 28, 2019 summarizing that investigation. A copy of said report is attached as Exhibit A.
12. Upon information and belief, during the investigation, Roberts received firsthand reports of sexual abuse by Rosenfeld from former WDS students.
13. Upon information and belief, Roberts informed Rosenfeld that former WDS students reported he fondled their genitals and Rosenfeld responded, "I recall doing that." (Exhibit A, 9) Further, Rosenfeld stated, "I have always touched students. I have done that in the public school and the private schools." (Exhibit A, 9)
14. Upon information and belief, a former WDS student reported to Roberts that he told his father about the abuse by Rosenfeld and his father spoke to Michael Gottesman, who was a gym teacher at WDS. (Exhibit A, 13)
15. Upon information and belief, Roberts interviewed Margaret Gottesman, the widow of Michael Gottesman and she reported her husband confronted Rosenfeld near the end of the 1971-72 school year, which was Gottesman and Rosenfeld's last school year at WDS. (Exhibit A, 13)
16. Upon information and belief, in his investigation Roberts concluded, "[T]he combined testimony of Student 5 and Mrs. Gottesman supports the conclusion

- that Gottesman directly confronted Rosenfeld in some manner shortly before Gottesman and Rosenfeld left WDS in or about June 1972.” (Exhibit A, 14)
17. Upon information and belief, WDS sanctioned and otherwise facilitated and condoned student sleepovers at Rosenfeld’s home.
  18. Upon information and belief, Rosenfeld, a WDS educator, used his position to induce students to come to his home, in order to gain access to them for the purpose of sexually abusing Plaintiff and other similarly situated students.
  19. Upon information and belief, at no time did any of the Defendants or their agents report Rosenfeld to lawful civil authorities.
  20. Plaintiff first met Rosenfeld in or around 1969. Rosenfeld’s abuse of Plaintiff occurred in or around the 1970-1971 school year. The sexual abuse included, but was not limited to Rosenfeld exposing his genitals to Plaintiff and Rosenfeld touching and fondling Plaintiff’s genitals. On multiple occasions throughout the night, Rosenfeld left his bed to come to Plaintiff’s bed where he would fondle Plaintiff’s genitals. The abuse occurred within Rosenfeld’s home when he invited Plaintiff for a sleep over after a WDS basketball game.
  21. Within approximately one to two weeks of Plaintiff’s abuse, Plaintiff described the abuse to then WDS teacher Michael Gottesman. Shortly thereafter, Gottesman informed Plaintiff he spoke with then Headmaster S. Maurice Plotnick about Rosenfeld’s abuse of Plaintiff.
  22. At all material times, Plaintiff was aware of no WDS rules or policies concerning or addressing sexual abuse, or sexual misconduct of WDS students, such as Plaintiff, by school administrators and/or teachers such as Rosenfeld.

23. During all material times, Plaintiff received no training or information in any form, including but not limited to, classroom instruction or oral presentation, or through written document on how to deal with sexual misconduct, sexual abuse and sexual boundary violations by WDS administrators and/or teachers such as Rosenfeld.
24. Upon information and belief, during all times herein, when Plaintiff was enrolled in school and communicating and otherwise interacting with Rosenfeld, Plaintiff was entrusted by his parents to the care of the Defendants and during such periods, the Defendants were acting in the capacity of *in loco parentis* because Defendants assumed custody and control over him as a minor child and as a student at the school.
25. Upon information and belief, Rosenfeld used his position of trust and authority vested in him by the Defendants for the purpose of sexually abusing Plaintiff.
26. Upon information and belief, the sexual abuse of Plaintiff by Rosenfeld was foreseeable.
27. Upon information and belief, at all material times, Defendants had a duty to exercise the same degree of care and supervision over the students, including Plaintiff, under their control as a reasonably prudent parent would have exercised under the same circumstances. This means that Defendants assumed a duty of care to protect the safety and welfare of Plaintiff as a student at WDS. At all material times, Defendants owed a duty to Plaintiff to provide a safe and nurturing educational environment, where he would be protected from administrators and staff like Rosenfeld who were under the employment and control of Defendants.



28. Upon information and belief, during Rosenfeld's employment by WDS and while Plaintiff was a student in WDS' care, Defendants failed to exercise the degree of care that a reasonably prudent parent would have exercised under similar circumstances.
29. At all material times, WDS owed a special duty to Plaintiff that required WDS to take reasonable steps to anticipate such behavior from its employees, like Rosenfeld, which threatened the safety of students including Plaintiff.
30. At all material times, Defendants had a duty to properly supervise Rosenfeld as their employees and because of their duty of care to Plaintiff.
31. At all material times, Plaintiff reposed his trust and confidence as a student and minor individual, in Defendants who occupied a superior position of influence and authority over Plaintiff to provide Plaintiff with a safe and secure educational environment.
32. Upon information and belief, at all material times, Defendants knew or should have known of Rosenfeld's propensity to sexually abuse minor students.
33. Upon information and belief, Defendants negligently failed to adequately implement a reasonable or effective supervisory system, plan, protocol or procedure for supervising personnel so as to prevent sexually inappropriate and sexually abusive behavior by WDS employees.
34. Upon information and belief, the failure to supervise includes, but is not limited to Defendants allowing and otherwise authorizing and inviting students to spend the night at Rosenfeld's apartment.



35. Upon information and belief, the injuries to Plaintiff resulted from Defendants' failure to provide Plaintiff with supervision of a parent of ordinary prudence under the same circumstances.
36. Upon information and belief, the injuries to Plaintiff were a foreseeable consequence of Defendants' negligent failure to supervise Rosenfeld and Plaintiff. Said injuries were caused by or contributed to by the carelessness, recklessness and grossly negligent conduct of Defendants, their agents, servants and/or employees, in failing to properly and adequately supervise the conduct of Rosenfeld as it related to Plaintiff.
37. Defendants were wanton, reckless, officially tolerant and deliberately indifferent to abuse of Plaintiff by Rosenfeld.
38. By reason of the foregoing, Plaintiff sustained physical and psychological injuries, including but not limited to, severe emotional distress, depression, humiliation, embarrassment, fright, anger, anxiety and loss of educational opportunity and has been caused to suffer pain and mental anguish, emotional and psychological damage as a result thereof, and, upon information and belief, some or all of these injuries are of a permanent and lasting nature, and Plaintiff has become and will continue to be obligated to expend sums of money for medical expenses.
39. That by the reason of the foregoing, Defendants are liable to Plaintiff for punitive and exemplary damages.

40. It is hereby alleged pursuant to CPLR 1603 that the foregoing cause of action is exempt from the operation of CPLR 1601 by reason of one or more of the exemptions provided in CPLR 1602, including but not limited to CPLR 1602(7).
41. That the amount of damages sought exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AND AS FOR A SECOND CAUSE OF ACTION:**

**NEGLIGENT RETENTION**

42. Plaintiff repeats and realleges the above paragraphs of this Complaint as if fully set forth herein.
43. Upon information and belief, as more fully alleged above, Defendants' duty of care to Plaintiff included a duty not to retain an employee like Rosenfeld who would use his position of authority and influence to harm minor students such as Plaintiff.
44. Upon information and belief, Defendants knew or should have known that Rosenfeld was sexually abusing Plaintiff and/or knew or should have known of his propensity to sexually abuse minor students with whom he came in contact.
45. When Plaintiff were in their care, said Defendants failed to exercise the degree of care that a reasonably prudent parent would have exercised under similar circumstances.
46. Defendants were wanton, reckless, officially tolerant and deliberately indifferent to abuse of Plaintiff by Rosenfeld.
47. Defendants are liable to Plaintiff as a result of their recklessness, official tolerance and deliberate indifference to the harm caused to Plaintiff by Rosenfeld.

48. By reason of the foregoing, Plaintiff sustained physical and psychological injuries, including but not limited to, severe emotional distress, depression, humiliation, embarrassment, fright, anger, anxiety and loss of educational opportunity and has been caused to suffer pain and mental anguish, emotional and psychological damage as a result thereof, and, upon information and belief, some or all of these injuries are of a permanent and lasting nature, and Plaintiff has become and will continue to be obligated to expend sums of money for medical expenses.
49. That by reason of the foregoing, Defendants are liable to Plaintiff for punitive and exemplary damages.
50. It is hereby alleged pursuant to CPLR 1603 that the foregoing cause of action is exempt from the operation of CPLR 1601 and by reason of one or more of the exemptions provided in CPLR 1602, including but not limited to, CPLR 1602(7).
51. That the amount of damages sought exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A THIRD CAUSE OF ACTION:**

**NEGLIGENT FAILURE TO PROVIDE A SAFE AND SECURE ENVIRONMENT**


52. Plaintiff repeats and realleges the above paragraphs of this Complaint as if fully set forth herein.
53. During all material times, WDS owed a special duty to Plaintiff as a student. This special duty required WDS to take reasonable steps to anticipate such threats from its employees like Rosenfeld which threatened the safety of Plaintiff.

54. Upon information and belief, by virtue of both their duty of care to Plaintiff and the positions of authority and influence they exercised over them, Defendants had a duty to Plaintiff to provide a reasonably safe and secure environment at WDS.
55. Upon information and belief, Defendants failed to provide a reasonably safe environment to Plaintiff by failing to exercise the degree of care that a reasonably prudent person would have exercised under similar circumstances.
56. As a result, Defendants are liable to Plaintiff for their negligent failure to provide a reasonably safe and secure environment.
57. By reason of the foregoing, Plaintiff sustained physical and psychological injuries, including but not limited to, severe emotional distress, depression, humiliation, embarrassment, fright, anger anxiety and loss of educational opportunity and has been caused to suffer pain and mental anguish, emotional and psychological damage as a result thereof, and, upon information and belief, some or all of these injuries are of a permanent and lasting nature, and Plaintiff has become and will continue to be obligated to expend sums of money for medical expenses.
58. That by the reason of the foregoing, Defendants are liable to Plaintiff for punitive and exemplary damages.
59. It is hereby alleged pursuant to CPLR 1603 that the foregoing cause of action is exempt from the operation of CPLR 1601 by reason of one or more of the exemptions provided in CPLR 1602, including but not limited to CPLR 1602(7) and 1602(11).

60. That the amount of damages sought exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, Plaintiff demands judgment against the Defendants, together with compensatory and punitive damages, and the interest, costs and disbursements pursuant to the causes of action herein.

Dated: New York, New York  
September 3, 2019

  
\_\_\_\_\_  
MICHAEL G. DOWD  
600 Third Avenue, 15<sup>th</sup> Floor  
New York, New York 10016  
(212) 751-1640

SWEENEY, REICH & BOLZ, LLP  
By: Gerard J. Sweeney, Esq.  
1981 Marcus Avenue, Suite 200  
Lake Success, NY 11042  
(718) 459-9000

Attorneys for Plaintiff

VERIFICATION

STATE OF NEW YORK     )  
                                  )ss.:  
COUNTY OF NEW YORK    )

MICHAEL RABIN, being duly sworn, deposes and says:

I am the plaintiff in the action; I have read the foregoing VERIFIED COMPLAINT and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe to be true.



MICHAEL RABIN

Sworn to before me this  
23<sup>rd</sup> day of August, 2019



NOTARY PUBLIC

MILCA S CASTRO  
Notary Public - State of New York  
No. 01CA6387842  
Qualified in New York County  
My Commission Expires Feb 25, 2023